IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

WP(C).No. 17965 of 2005(L)

OS.373/2003 of PRINCIPAL MUNSIFF,ALAPPUZHA

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PETITIONER:

M.L.BHARATHI AMMA, D/O.LATE LAKSHMI AMMA
AGED 74 YEARS, MOOPPILACHERIL HOUSE, POLLEATHAI
P.O. ALAPPUZHA.

BY ADV. SMT.C.G.BINDU
SMT.C.G.AJITHA

RESPONDENT:

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1. M.N.KRISHNA KURUP, S/O.LATE LAKSHMI AMMA
AGED 81 YEARS, SREETHA NIVAS, S.L.PURAM P.O.
ALAPPUZHA.

ADDL 2. M.L.KARTHIYAYINI AMMA, D/O.LATE LAKSHMI AMMA,
KOLLAMPARAMBIL, POLLATHAI PO., ALAPPUZHA.

ADDL.R2 IMPLEADED AS PER ORDER DT.14.6.07 IN
I.A.15232/05.

R1 BY ADV. SRI.JOY THATTIL ITTOOP
ADDL. R2 BY ADV. SRI.J.OM PRAKASH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

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W.P.(C)No.17965 OF 2005

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DATED THIS THE 14TH JUNE, 2007

J U D G M E N T

Heard the submissions of Smt.C.G.Bindu, counsel for the petitioner and those of Sri.Om Prakash, counsel for the additional 2nd respondent.

2. Exts.P7 and P8 orders are under challenge in this Writ Petition. Ext.P8 is the order passed on an application (I.A.No.2267 of 2004) filed by the 1st respondent seeking a direction to compel the attendance of the petitioner before court for the purpose of cross-examination with reference to the averments in I.A.No.527 of 2004 and I.A.No.1765 of 2004 (Exts.P1 and P2). Having gone through Ext.P8 order and having considered the rival submissions, I am of the view that the learned Munsiff was justified in allowing the application. But the learned Munsiff should have noticed the contention of the petitioner that she is a very old lady and that a commission be deputed for recording her testimony. Under these circumstances, I modify Ext.P8 to the extent of deleting the direction that the petitioner-1st plaintiff shall appear personally in court for conduct of her cross-examination and by directing the court below to appoint a senior member of the Bar for recording her testimony as witness. To that

extent the challenge against Ext.P8 succeeds. It is made clear that all expenses for the advocate commissioner shall be borne by the petitioner and such costs will not be part of the ultimate costs of the suit.

3. Ext.P7 is a common order in an application for amendment of the plaint and also in an application for impleadment of an additional respondent in the suit. The prayer in I.A.No.2267 of 2004 (Ext.P3) itself was to cross-examine the petitioner with reference to the averments in Exts.P1 and P2 I.As. The learned Munsiff was not justified in disposing of those I.As. on the same day along with Ext.P3 I.A. Those two I.As. should have been kept pending till such time as the petitioner is examined pursuant to the order in Ext.P3 application.

4. I set aside Ext.P7 and direct the learned Munsiff to take a fresh decision on I.A.No.527 of 2004 and I.A.No.1765 of 2004 (Exts.P1 and P2), after the evidence of the petitioner is recorded pursuant to Ext.P8 order as modified by my judgment.

The Writ Petition is disposed of as above. No costs.

(PIUS C.KURIAKOSE, JUDGE)

tgl